

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SHELBY N. JOHNSON,

Plaintiff,

-against-

THOMAS J. DUDEK-KUSHNIK, FED EX
GROUND, INC., CUNEX, INC., MOE DOE,
LARRY DOE, CURLY DOE AND/OR
THREE STOOGES CORPORATION
(fictitious names for the persons, partnerships
and/or corporations intended),

Defendants.

Docket No.: 2:20-cv-16603

Civil Action

Document electronically filed

**NOTICE AND PETITION OF
REMOVAL**

TO: United States District Court
District of New Jersey
50 Walnut Street
Newark, New Jersey 07101

Defendants, JOSHUA THOMAS DUDEK-KUSHNICK i/p/a THOMAS J. DUDEK-KUSHNIK, FEDEX GROUND PACKAGE SYSTEM, INC., i/p/a FED EX GROUND INC., and CUNEX, INC. (hereinafter collectively referred to as “Defendants”), hereby remove this action from the Superior Court of the State of New Jersey, County of Union, to the United States District Court for the District of New Jersey in accordance with 28 U.S.C. §1446. In support of this Notice of Removal, Defendants state as follow:

STATE COURT ACTION

1. A civil action has been instituted against Defendants in the above-entitled action in the Superior Court of the State of New Jersey, Union County, entitled Shelby N. Johnson v. Thomas J. Dudek-Kushnik, Fed Ex Ground, Inc., Cunex, Inc., Moe Doe, Larry Doe, Curly Doe and/or Three Stooges Corporation (fictitious named for the persons, partnerships and/or corporations intended), under bearing the Docket No.: UNN-L-3432-20, which was filed in said Court on October 16, 2020. See a copy of Plaintiff's Complaint, dated October 15, 2020, annexed hereto as **Exhibit "A"**.

2. On October 22, 2020, a copy of the Plaintiff's Complaint was served upon Defendant, Joshua Thomas Dudek-Kushnick. See a copy of the Affidavits of Service for Defendants annexed hereto as **Exhibit "B"**; see also **Exhibit "A"**.

3. On October 22, 2020, a copy of the Plaintiff's Complaint was served upon Defendant, Cunex, Inc. See **Exhibit "A"**; see also **Exhibit "B"**.

4. Upon information and belief, a copy of the Plaintiff's Complaint was served upon Defendant, FedEx Ground Package, System, Inc, on or about October 26, 2020. See **Exhibit "A"**. No proof of service was provided for service upon FedEx Ground Package System, Inc. at this time.

5. Plaintiff commenced this action against the Defendants as a result of an alleged motor vehicle accident that occurred on December 17, 2019 while traveling Eastbound on Regina Avenue, in the City of Rahway, County of Union, New Jersey. See **Exhibit "A"**.

6. Additionally, Plaintiff's Complaint alleges negligence, carelessness, and recklessness on the part of the Defendants. See **Exhibit "A"**.

7. Defendants are requesting to remove this action from the Superior Court of New Jersey, County of Union to this Court on the basis of Diversity Jurisdiction, 28 U.S.C. §1332, and which may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. §1441.

8. This Notice of Removal is timely filed in that it is filed “within 30 days after the receipt by the defendant[s], through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which...” this action is based. 28 U.S.C. §1446(b).

DIVERSITY OF CITIZENSHIP

9. Upon information and belief, Plaintiff, Shelby N. Johnson, is domiciled in the State of New Jersey and resides at 338 Regina Avenue, in the City of Rahway, County of Union, New Jersey. *See* **Exhibit “A”**.

10. Defendant, FedEx Ground Package System, Inc., is a corporation incorporated in the State of Delaware.

11. Defendant, FedEx Ground Package System, Inc.’s principle place of business is located at 1000 FedEx Drive, Moon Township, Pennsylvania.

12. Defendant, Cunex, Inc.’s principle place of business is located at 87 Hyacinth Road, Levittown, New York.

13. Defendant, Joshua Thomas Dudek-Kushnick, is domiciled in the State of New York.

14. Complete Diversity of Citizenship exists in this case because, for the purposes of diversity, Plaintiff is a citizen of New Jersey, FedEx Ground Package System, Inc. is a citizen of Delaware and Pennsylvania, and both Cunex, Inc. and Joshua Thomas Dudek-Kushnick are citizens of New York. *See* 28 U.S.C. §1332(c).

AMOUNT IN CONTROVERSY

15. Plaintiff's Complaint alleges that she is entitled to recover monetary damages from Defendants and that Plaintiff demands judgment against Defendants for damages plus interests and costs of suit. *See* **Exhibit "A"**.

16. Specifically, the Complaint alleges that Plaintiff "sustained severe and permanent personal injuries including but not limited to: a right sided disc herniation at L5-S1 that impinges upon the anterior thecal sac and right nerve roots within the spinal canal; a left disc herniation effacing the anterior thecal sac at C5-6 impinging upon the cervical spinal cord itself and left nerve roots; a tear of the supraspinatus tendon; and left C5-C6 and right L4-L5 radiculopathy; has been and will be caused great pain and suffering; has been and will be caused to expend large sums of money in an effort to cure herself of her injuries; has been and will be deprived of attending her usual activities and other great damages." *See* **Exhibit "A"**.

17. While Plaintiff has not yet alleged damages in excess of \$75,000, she may, which would give this Court jurisdiction pursuant to 28 U.S.C. §1446(c)(2)(A)(ii). *See generally*, 28 U.S.C. §1332(a).

18. As required by 28 U.S.C. §1446(a), a true and correct copy of all process served upon the Defendant, and within Defendants' position, in this action are attached. *See* **Exhibit "B"**.

19. Written notice of the filing of this Notice of Removal and Petition will be electronically filed with the Clerk for the New Jersey Superior Court, County of Union and served on all parties pursuant to 28 U.S.C. §1446(d). *See* a copy of said written Notice of Removal annexed hereto as **Exhibit "C"**. Moreover, a list of all counsel of record, including their contact information, and the parties represented by counsel are identified within the written Notice of Removal. *See* **Exhibit "C"**.

20. Defendants notice the removal of this action on the grounds that it is between the citizens of different states and allegedly involves a claim in excess of \$75,000.00, exclusive of interest and costs; and is thereby removable under 28 U.S.C. §1441, et seq.

WHEREFORE, Defendants, JOSHUA THOMAS DUDEK-KUSHNICK i/p/a THOMAS J. DUDEK-KUSHNIK, FEDEX GROUND PACKAGE SYSTEM, INC., i/p/a FED EX GROUND INC., and CUNEX, INC., respectfully request that the action pending against them in the Superior Court of the State of New Jersey, County of Union be removed therefrom to this Court.

Dated: November 19, 2020

Respectfully Submitted,
CALLAHAN & FUSCO, LLC



MATTHEW B. SICHERI, ESQ.
103 Eisenhower Parkway, Suite 400
Roseland, New Jersey 07068
Attorneys for Defendants,
JOSHUA THOMAS DUDEK-KUSHNICK
i/p/a THOMAS J. DUDEK-KUSHNIK,
FEDEX GROUND PACKAGE SYSTEM,
INC., i/p/a FED EX GROUND INC., and
CUNEX, INC.
Phone: (877) 618-9770
Fax: (973) 618-9772
E-Mail: msicheri@callahanfusco.com

TO: Christopher L. Musamanno, Esq.
EINHORN, BARBARITO, FROST & FOTWINICK
165 E. Main Street
P.O. Box 3010
Denville, New Jersey 07834-3010
cmusmanno@einhornlawyers.com